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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,817	01/08/2004	Rhonda L. Childress	AUS920030939US1	6768

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EXAMINER
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ANWARI, MACEEH

ART UNIT	PAPER NUMBER
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2144

NOTIFICATION DATE	DELIVERY MODE
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07/14/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptonotifs@yeeiplaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/753,817	<b>Applicant(s)</b> CHLDRESS ET AL.	
	<b>Examiner</b> MACEEH ANWARI	<b>Art Unit</b> 2144	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7, 8, 10- 14 and 17- 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 8, 10-14 and 17- 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/07/2008</u> .   | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

This action is responsive to the appeal brief filed on 4/11/2008. **Claims 5, 6, 9, 15 and 16** have been canceled, no other claims have been canceled or newly presented. Accordingly, **claims 1- 4, 7- 8, 10-14 and 17- 20** are pending.

#### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 11- 14 and 17** are rejected under 35 U.S.C. 101 because the claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

Descriptive material can be characterized as either “functional descriptive material” or “non-functional descriptive material.” Both types of “descriptive material” are non-statutory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)

Merely claiming non-functional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because “[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.”).

**Claims 18- 20** are rejected under 35 U.S.C. 101 because the claims fail to place the invention squarely within one statutory class of invention. On paragraph 67 of the instant specification, applicant has provided evidence that applicant intends the “medium” to include signals. As such, the claim is drawn to a form of energy. Energy is not one of the four categories of invention and therefore this claim(s) is/are not statutory. Energy is not a series of steps or acts and thus is not a process. Energy is not a physical article or object and as such is not a machine or manufacture. Energy is not a combination of substances and therefore not a composition of matter.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1- 4, 7, 8, 10- 14, and 17- 20** are rejected under 35 U.S.C. 102(b) as being anticipated by **Feldmann et al.** (hereinafter **Feldmann**), U.S. Publication No.: 2002/0103631 A1.

**Claim 1:** A method in a data processing system for monitoring transactions for a set of known nodes in a network data processing system, the method comprising:

receiving cache data from a router in the data processing system, wherein the cache data includes an identification of the set of known nodes sending data packets for transactions onto the network data processing system (Figures 1, 3- 8 and Abstract & par. 20, 52- 53 & claims 15 & 32; link statistics, start and destination points, volume/flow computation and cached data);

identifying the transactions handled by each node in the set of known nodes using the cache data received from the router, to form identified transactions (Figures 3- 5 and Abstract & par. 20, 36, 52- 53 & claims 15 & 32; link statistics, start and destination points and cached data);

analyzing the identified transactions (Figures 3- 5 and Abstract & par.9 & 40; algorithms and computing traffic flows); and  
in response to the analyzing the identified transactions, selectively initiating a load balancing process for at least one of the nodes in the set of known nodes to mitigate transaction overload at the at least one of the nodes (Figures 2- 6 and Abstract & par. 20, 40, 52- 53 & claims 15 & 32; display network nodes/traffic, computing traffic demands and load-balancing).

**Claim 2:** wherein the cache data is from an address resolution protocol cache located on the router (Figures 1- 2, 6 & 10- 11 and Abstract & par.19- 21, 52- 53 & claims 15 & 32; physical nodes and IP networks).

**Claim 3:** further comprising receiving cache data from other routers on the network data processing system (Figures 3- 5 & 8- 9 and Abstract & par. 20, 52- 53 & claims 15 & 32; link statistics, start and end destinations, forwarding/BGP tables and cached data).

**Claim 4:** wherein the receiving step occurs on a periodic basis (Figures 3- 5 & 7-9 and Abstract & par. 20, 31, 52- 53 & 58; forwarding tables logged periodically).

**Claim 7:** generating a display of the set of known nodes in a graphical view, wherein the graphical view includes the communications paths with a graphical indication of the network traffic (Figures 2, 6 & 8- 11 and Abstract & par. 20, 52- 53 & claims 15 & 32; display network nodes/traffic and link statistics).

**Claim 8:** wherein the cache data is received through an agent located on the router (Figures 1- 11 and Abstract & par. 13. 20, 52- 53 & claims 15 & 32; algorithms, software and programming languages).

**Claims 1- 4 and 7- 8** list substantially the same elements as in **claims 10- 14 and 17- 20** and are therefore rejected with the same rationale.

Furthermore regarding the limitation stated within **claim 10** (i.e. bus system, a communications unit, a memory, and a processing unit) **Feldmann** discloses an IP router layer, with routers and layer three links, and a physical transport layer, with devices and layer three links, and even the inclusion of layer two devices therefore meeting the limitations disclosed within the instant claim (Par. 19).

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**Examiner Note:** Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in its entirety as potentially teaching of all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

***Response to Arguments***

4. Applicant's arguments with respect to **claims 1- 4, 7, 8, 10- 14, and 17- 20** have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MACEEH ANWARI whose telephone number is (571)272-7591. The examiner can normally be reached on Monday-Friday 7:30-5:00 PM ES.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on 571-272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2151

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M.A.

/John Follansbee/

Supervisory Patent Examiner, Art Unit 2151